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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/284,893	08/02/94	FEHN	G 037129

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A3M1/0619

TIMM, C. EXAMINER	
ART UNIT	PAPER NUMBER
1307	9

DATE MAILED:

06/19/96

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents.

Office Action Summary

Application No.

08/284,893

Applicant(s)

Fehn

Examiner

Catherine Timm

Group Art Unit

1307



☒ Responsive to communication(s) filed on Mar 11, 1996

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1 and 3-138 is/are pending in the application.

Of the above, claim(s) 1, 3-87, and 113-138 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 88-112 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Part III DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of Group II in Paper No. 6 and the species of Fig. 4 in Paper No. 8 is acknowledged. The traversal of the Group II election is on the ground(s) that all the claims are directed to the single inventive concept of making containers incorporating post-consumer plastic and that there is no undue burden. This is not found persuasive because Group I is directed not to making containers but to the containers themselves while Group II is directed to the process of making containers. As set forth in the restriction requirement, the containers of Group I can be made by processes different from than the process of Group II and thus the two sets of claims are distinct. Each set of claims involves different issues and require different searches. Therefore, there would be an undue examination burden.

In regard to the species, mutual exclusivity is not required between species. However, as no undue burden is presented by examining all of claims 88-112, these claims have been examined together.

The requirement is still deemed proper and is therefore made FINAL.

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Specification

2. The disclosure is objected to because of the following informalities:

On page 27, line 9 and page 28, line 18, "thermal forming" should be --thermoforming--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 88-112 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 88, line 2, "composing" is vague and unresponsive. It is suggested that "composing" be replaced with --providing-- or --supplying--.

In claim 88, line 5, "a container" has already been recited in the preamble and thus "a" should be --the-- or --said--.

In claim 88, line 6 refers to "said molding" but "molding" has previously been used as a verb not a noun. It is suggested that "said molding" be changed to --said step of molding--.

In claim 88, lines 7-8 are confusing. The meaning of "at least part of said wall" is not clear.

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In claim 88, line 9, "said part" is confusing because the first layer is at the previously recited "part" of the wall. It would seem that the second layer occupies a different part of the wall not the same part as the first layer.

In claim 90, it is not clear what is to contain contaminant.

In claims 92-93, "plastic" should be --thermoplastic--.

In claim 96 there is no antecedent basis for "the pieces".

In claim 97, it is not clear whether the first continuous film or second continuous film is being referenced.

Allowable Subject Matter

4. Claims 88-112 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112.

The claimed invention is deemed unobvious over the art of record because such art does not teach or suggest a process of molding a container having an outer layer of post-consumer thermoplastic containing polyethylene and a substantially continuous inner layer of EVOH of the same extent as the polyethylene post-consumer layer. While the prior art teaches the general concept of forming a protective interior layer and an outside recycled layer (Nilsson, Slat et al., Cahill), none of the prior art references contemplate forming the combination of a post-consumer polyethylene layer with a protective EVOH layer to make a container.

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Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Timm whose telephone number is (703) 308-3830. The best time to reach the examiner is on Monday-Thursday from 7:00am-5:30pm. The examiner is also sometimes reachable on Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan H. Silbaugh, can be reached at (703) 308-3829.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



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ct
June 13, 1996